

Testimony Regarding HB 4562
Digital Electronic Equipment Repair Act
Before the Michigan House Committee on Regulatory Reform
Jesse McArdell, Midwest Policy & Engagement Manager

Chairman Carter and members of the Committee:

My name is Jesse McArdell and I'm the Midwest Policy and Engagement Manager for the National Marine Manufacturers Association (NMMA). By way of introduction, NMMA is the premier trade association representing manufacturers of recreational marine engines, boats and accessories in North America. NMMA member companies produce more than 80 percent of the boats, engines and accessories used by boaters and anglers in North America. Recreational boating has an estimated direct and indirect annual economic impact of \$170.3 billion. Boating in Michigan has an annual economic impact of \$11.7 billion, providing 45,000 jobs and supporting 1,478 businesses.

Thank you for providing us with the opportunity to express our opposition to HB 4562 as written. We ask that the Committee oppose the bill or add language to exclude marine electronics and all offroad vehicles.

While there are several aspects of HB 4562 that are troubling, we will focus on how manufacturers would have to violate federal law to comply with this bill.

Boat engine owners have easy access to parts and the diagnostic software needed to perform the vast majority of repairs and adjustments. They can walk into any dealership and purchase the parts they need, from the smallest fuel injector to entire lower units. They can buy the diagnostic tools and software needed to identify error codes and the repair manuals needed to decipher them. Boat engine manufacturers provide significant access.

However, the extent of that access is strictly limited by the U.S. EPA and the Clean Air Act. To comply with Clean Air Act and meet EPA mandates, recreational marine engine manufactures cannot provide access to pollution control devices. In guidance issued on Nov. 23, 2020, by Susan Parker Bodine, EPA Assistant Administrator for Enforcement and Compliance Assurance [attached], tampering with emission controls is a federal offense. Manufacturers are the gatekeepers. They must ensure that access to the software controlling an engine's emissions only be made available to those who can be expected to adhere with Clean Air Act mandates and to keep emission tolerances within federally required levels. OEMs must limit access to these highly regulated sections of software to factory-trained and certified technicians, and even then, some access points are only available to representatives of the manufacturer. As Ms. Bodine states in the official guidance:

"Section 203(a)(3) of the [Clean Air] Act prohibits tampering with emissions controls and prohibits making and selling products with a principal effect of bypassing, defeating, or rendering inoperative emissions controls. The prohibitions in section 203(a)(3) apply to all vehicles, engines, and equipment subject to the certification requirements under section 206 of the Act, or other design requirements in the Act or regulations. This includes... nonroad vehicles (e.g., all-terrain vehicles, off-road motorcycles) and nonroad engines (e.g., marine engines, engines used in generators, lawn and garden equipment, agricultural equipment, construction equipment). Certification requirements include those for exhaust or "tailpipe" emissions, evaporative emissions, and onboard diagnostic systems."

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The language in HB 4562 clearly requires manufacturers to give the general public access to these “locked” sections of software and emission controls – and the codes needed to reset the locks that have been breached. Boat engine manufacturers simply cannot, under federal law, facilitate access to these protected areas.

HB 4562 written with the intent of going beyond giving the public or independent repair shops the ability to repair their marine engines. *It gives them the ability to tamper with emission controls and violate federal emission standards.*

For those reasons and more, we ask the committee to vote against this bill. If you have questions, please contact me at Jmcardell@nmma.org